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Supreme Court, U.S.
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No. 99-140

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1999

Edbert Neal Williams,
Petitioner,

v.

The State of Minnesota,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner Williams was convicted for attempted murder of his ex-girlfriend and murder of her grandmother. Witnesses placed him at or near the scene. Petitioner discovered evidence another might also have had a motive to commit the crimes, but could not connect that person to the scene. The trial court excluded the evidence as irrelevant, and the Minnesota Supreme Court affirmed. Was non-disclosure by the state of inadmissible evidence a violation of *Brady v. Maryland?*

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent State of Minnesota asks this Court to deny the Petition for a Writ of Certiorari seeking review of the decision of the Minnesota Supreme Court.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at *State v. Williams,* 573 N.W.2d 227 (Minn. 1999), and is reprinted in the Appendix to the Petition at pages A-1 to A-24. The Ramsey County District Court (the trial court) did not issue an opinion.

JURISDICTION

Petitioner invokes the jurisdiction of the Court pursuant to 28 U.S.C. § 1257.

This Court has no jurisdiction because the judgment of the Minnesota Supreme Court rests on an adequate and independent state law ground. An opinion of this Court on the asserted Federal Law question would be merely advisory and would not effect the judgment of the state court. *Coleman v. Thompson,* 501 U.S. 722, 729, 111 S.Ct. 2546, 2553-54, 115 L.Ed.2d 640 (1991).

STATEMENT OF THE CASE

A jury found Petitioner Edbert Williams guilty for the attempted murder of his ex-girlfriend Shelly Campeau, and for the murder of Genelda Campeau, Shelly's grandmother. The trial court sentenced petitioner to life imprisonment for murder and a consecutive sentence of 15 years for the attempted murder. Petitioner appealed directly to the Minnesota Supreme Court, arguing, among other things, that there had been a violation of *Brady v. Maryland*. (*See, State v. Williams, supra., at* A-2. Hereafter references to the decision of the Minnesota Supreme Court will be only to the pages in the Appendix to the Petition.) They affirmed the convictions.

Petitioner's defense at trial was that the murder was committed by a third person. (A-16.) During trial, petitioner attempted to introduce evidence of crimes committed against the Campeaus by another of Shelly Campeau's former boyfriends, Gary William Bultman. (*See*, trial transcript, page 1373. Hereafter, "T x". *See, also,* A-8.) Petitioner had learned of the evidence and attempted to introduce it on cross-examination of Shelly Campeau without disclosing it to the prosecution. (A-9, -14.) The prosecution had not disclosed the evidence to the defense. (A-14.) The prosecutors objected, claiming no knowledge of the evidence and lack of notice. (A-4, -9.) The judge recessed the trial for one day to assess the information. (A-4, -9.)

Upon reconvening, petitioner's counsel moved to dismiss the prosecution, charging that the failure to disclose the Bultman evidence was a violation of *Brady v.*

Maryland. (T 1457.) Some of the information was known to the office of the Ramsey County Attorney, but was unknown to the prosecutors responsible for petitioner's prosecution. (A-9.)

The trial court denied the motion to dismiss and found that there had been no violation of *Brady v. Maryland.* (T 1472-73.) Because there was no evidence that Bultman was at or near the scene of the murder, the trial court ruled as a matter of state law that the evidence was not relevant and therefore inadmissible. (T 1476. A-10.) The Minnesota Supreme Court affirmed the holding that the Bultman evidence was irrelevant and inadmissible. (A-11, -14.)

The holding that the evidence was irrelevant and inadmissible was based on state law, but the Minnesota Supreme Court went on to hold that the evidence was not material and therefore there had been no violation of *Brady v. Maryland.*

All of the evidence that petitioner claims was not disclosed was available to petitioner by the time the trial court ruled that it was irrelevant and not admissible. Petitioner did not move for a mistrial or for a continuance to allow him to seek other information. He does not claim that there is any other evidence connecting Bultman to the crime. There is no additional evidence to add to that available to both the trial court and the Minnesota Supreme Court when they decided that there had been no violation of *Brady v. Maryland.*

The Petition for Certiorari questions the application of *Brady v. Maryland* by the Minnesota

Supreme Court, claiming that they misconstrued the meaning of "materiality". Although Petitioner asks this Court to find that the evidence is "material" under the *Brady* analysis, his request for relief seeks not a new trial before which he will have adequate time to prepare, but a new trial where the Bultman evidence is admitted. He seeks not a change in the application of *Brady*, but a ruling by this Court that the evidence—all of which was available at the time of his trial—is admissible at the state court trial.

A. Facts Before the Jury

1. Summary

Genelda Campeau died from stab wounds in her 1222 Edmond Avenue, St. Paul, Minnesota home on January 12, 1996. Genelda's granddaughter, Shelly Campeau, witnessed the murder and was stabbed twice. Shelly unequivocally identified Petitioner Edbert Neal Williams as the murderer. Her testimony was corroborated by physical evidence. A passing motorist saw and identified Petitioner as the assailant. In jail after his arrest, Petitioner told his cell-mate D.M.I. that he killed Genelda Campeau and stabbed Shelly. Petitioner attempted to hire D.M.I. to finish killing Shelly.

2. Genelda Campeau is Murdered

Petitioner and Shelly Campeau dated but their relationship was turbulent and abusive. (T. 1272-73, 1283, 1551-61, 1567-71.) In 1994 they had a child, Dominic, but Shelly left Petitioner and moved in with her grandmother Genelda Campeau. (T. 1303-04.) Shelly and

Petitioner remained friends in 1995 and Petitioner would sometimes visit his son at Shelly's invitation. (T. 1304-05.) On January 12, 1996, Petitioner uncharacteristically took the initiative and phoned Shelly, asking to see Dominic. (T. 1313.) After some reluctance Shelly agreed and Petitioner arrived between 6:30 and 7:00 p.m. that night. (T. 1317.)

Shelly asked Petitioner to remove his shoes, and they and Genelda watched television in the living room while Dominic played nearby. (T. 1320; 1330.) Shelly left the house once to chat with a friend outside for a few minutes, and at one point Genelda mentioned that she had received a number of hang-up calls thought to be placed by another of Shelly's former boyfriends, Gary Willliam ("Bill") Bultman. (T. 1328-31.)

Shelly left the living room to get a diaper for Dominic, and only seconds later heard a thumping noise. (T. 133-36.) She returned to see that her grandmother had fallen from the couch, and Petitioner was standing over her, stabbing her with a knife and something white in his right hand. (T. 1336-37.) Shelly saw Petitioner stab her grandmother twice in the chest. As Dominic stood by crying and screaming, Shelly tried to pull Petitioner away. (T. 1339-43.) Petitioner turned to Shelly and told her he'd wanted to kill her for a long time, and threatened Dominic. (T. 1344-45.) Petitioner reached over Shelly and stabbed her in the back. (T. 1347.)

Shelly maneuvered toward the porch, attempting to get outside. In the kitchen, Petitioner stabbed her in the chest, breaking the knife. (T. 1348-50.) Petitioner tried to drag Shelly back in the house by her sweatshirt, but she

slipped out of it. Once outside, she leaned against the house. (T. 1350, 1353.) Petitioner followed and the struggle continued until Shelly broke free and ran into the street. (T. 1353-54.)

Donna Spangler was driving by and saw a woman and a man fighting on the sidewalk. She heard the woman shout "He killed my grandma!" and "Please help me!" (T. 1105; 1113.) Spangler heard the man say "Shut the fuck up, shut the fuck up. I'll kill you, bitch". (T. 1113.) Spangler drove to a nearby store and convinced an off-duty police officer to return to the scene. (T. 1117-18; 1137-38.) Meanwhile, a neighbor heard Shelly's screaming and called 911. (T. 1097-98.) Petitioner got his coat and shoes from the house and fled down an alley. (T. 1354-55.)

3. The Investigation

Four officers who arrived at the scene described Shelly as hysterical, screaming, and traumatized as she told them that Petitioner stabbed and killed her grandmother. She gave them his address. (T. 1153; 1182, 1193-94.) Shelly was taken to the hospital, where her two stab wounds were treated. (T. 1260-61.) Either could have caused her death if it had penetrated her chest. (T. 1264.)

The officer who found Geneida dead on the living room floor called for more assistance. (T. 1168.) Two officers responding to the call saw a man matching the killer's description emerge from an alley a short distance from the Campeau home. (T. 1206.) The man, Petitioner, appeared to have blood on his hands, and the officers

arrested him after Donna Spangler identified him as the man she saw fighting with Shelly. (T. 1210, 1235-36.)

The investigating homicide detective arrived at about 8:00 p.m. and observed a blood stain on the outside wall of the house. (T. 1645-55.) On a window ledge a white, slashed sock stained with blood contained a knife handle; a broken blade and blood stains were found on the kitchen floor. (T. 1654.) The detective examined Genelda Campeau's body and saw wounds to her chest, throat and head, and noted the blood next to her was liquid. (T. 1656-58.)

Blood scrapings, the broken knife, the cut sock and Petitioner's clothing were sent to the crime lab for analysis. (T. 1680-91.) Fingerprint analysis could not be done on the submitted items because the chemical used for that testing would have contaminated the blood on each. (T. 1731.) The blood on the knife matched Genelda Campeau's, and the blood on the storm door matched Shelly's. (T. 1751, 1755, 1763.) The police found blood on the insides of Petitioner's shoes and blood on the kitchen floor, but in amounts too small to be successfully analyzed; tests found no blood on the rest of Petitioner's clothing. (T. 1755-56; 1762, 1765.)

The medical examiner identified 21 wounds on Genelda's body and determined she was the victim of a homicide. (T. 1801, 1803-05; 1815-16; 1826.) The medical examiner testified both her observations and those of the detective were consistent with a death perpetrated by a right hand assailant occurring at approximately 7:30 p.m. (T. 1782, 1824-25, 1857.)

4. Petitioner Hires a Cell-Mate to Kill Shelly

In jail during August, 1996, Petitioner shared a cell with D.M.I., an inmate with several theft and forgery convictions. (T. 1876, 1877, 1882.) Petitioner told D.M.I. that he killed Genelda and stabbed Shelly, and wanted to "get rid of" Shelly because she was the key witness in the case against him. (T. 1883-84; 1888.) D.M.I. was released before Petitioner's trial. Petitioner offered D.M.I. one thousand dollars to kill Shelly, at that time living with her mother. (T. 1892-94.) Petitioner furnished D.M.I. with a list of names and descriptions of Shelly, her mother, and a car at her mother's home. (T. 1897-98.) Much of this information was not part of the record in this case and D.M.I. could have only learned of it from Petitioner.

D.M.I. notified the police, who began monitoring Petitioner's phone conversations with D.M.I. (T. 1904-09; 2013.) D.M.I. received several calls from Petitioner; the recordings captured details of the contract to kill Shelly and were played for the jury. (T. 2013, 2036; Trial Exhibits 47 and 48.) It was arranged that D.M.I. would pick up three hundred dollars from Petitioner's brother as partial payment for murdering Shelly. (T. 1908.) Police videotaped D.M.I.'s meeting with Petitioner's brother Lee Williams, who retrieved three hundred dollars from his car, handed it to D.M.I., and "high-fived" to seal the deal. (T. 1911; 2067-71.)

The jury found Petitioner guilty of first degree murder of Genelda Campeau and first degree attempted murder of Shelly Campeau.

B. The Trial Court's Evidentiary Ruling

Well into trial, Petitioner attempted to introduce evidence that he hoped would show that Gary William Bultman had committed the murder. (T. 1373.) Trial was recessed for one day while the trial court reviewed the evidence and considered arguments.

Shelly's relationship with Bultman had also been turbulent, and Bultman faced charges for damaging property, burglarizing, and peering in windows at the Campeau home. (T. 1426, 1435-36.) Since the detective in the case knew about Bultman but did not pursue him as a suspect, Petitioner accused the State of deliberately hiding this information from him in violation of *Brady v. Maryland.* (T. 1455.)

The prosecutors in Petitioner's case had only constructive, and not actual, knowledge of Bultman's connection with the Campeaus. They argued that none of the evidence offered by Petitioner connected Bultman to the crimes in this case. (T. 1374.)

The trial judge carefully considered Bultman's contacts with the Campeaus, including Bultman's past abuse of Shelly and tense relationship with Genelda. (T. 1475-76.) The court determined that none of that evidence connected Bultman with 1222 Edmond Avenue on January 12, 1996, and found it irrelevant and inadmissible.

C. Review by the Minnesota Supreme Court

On direct appeal, the Minnesota Supreme Court affirmed. Rejecting Petitioner's challenge to the excluded Bultman evidence, the court explained that Petitioner had not laid the required foundation connecting Gary William Bultman with *any* of the times, places, or events of this murder and stabbing. (A-13.) The evidence was therefore irrelevant and inadmissible under Minnesota law. In answer to Petitioner's charged *Brady* violation, the court reasoned that the facts offered about Bultman did not meet the "materiality" test of *Brady*:

> Nothing in the Bultman evidence itself exonerates [Petitioner], nothing directly impeaches or contradicts the testimony of any of the state's witnesses, and [Petitioner] failed to provide any evidence linking Bultman to the charged crimes. Moreover, the conclusions that [Petitioner] asks us to draw from the Bultman evidence – that Bultman, not [Petitioner], killed Genelda and attacked Shelly – are mere speculation and contradict the sworn testimony of at least three witnesses. Given the collateral and speculative nature of this evidence, the prosecution's failure to disclose it does not undermine our confidence in the outcome of [Petitioner's] trial.

(A-15 to A-16.)

Petitioner posited that even if the Bultman evidence was immaterial, the prosecution's failure to

disclose it hampered his investigation and ultimately, his trial strategy. The court looked at what effect undisclosed evidence may have had on the defendant's preparation or presentation of his case, and answered:

> [W]e find no merit to [Petitioner's] claim that the prosecution's failure to timely disclose the Bultman evidence had material consequences to on the defense's ability to investigate or prepare for its case. Nothing…prevented the defense from questioning… witnesses about the possibility that a third party may have participated in the killing…. [T]he theory that a person other than [Petitioner] committed the crimes was the defense's theory… throughout trial.
>
> Moreover, *the defense knew of Bultman's relationship with the Campeaus prior to trial,* [having been given] and reviewed the grand jury transcripts showing Shelly said "Bill" had repeatedly called Genelda's house on the day of the killing. *The defense chose not to investigate who Bill was until after the jury had been seated....*
>
> [A]t the defense's request, the court granted the parties a day to fully review the Bultman evidence…[and the] defense never indicated that additional time was needed to further investigate the Bultman evidence… The trial court [offered to reconsider its ruling] if additional evidence adding validity to the defense's claim that Bultman killed Genelda

> came to light...[but] *no such evidence was ever offered.*

(A-16 to A-17) (emphasis supplied). The Court held that neither the Bultman evidence nor the state's failure to timely disclose it were material to Petitioner's case, and so the state's failure to disclose the evidence was not reversible error. (A-17.)

REASONS FOR DENYING THE PETITION

A. Summary

This Court has no jurisdiction to review a state court judgment when the decision of the state court rests on a state law ground that is independent of the federal question and adequate to support the judgment. Where the resolution of any independent federal ground for the decision will not affect the judgment, a decision of this Court would be merely advisory. The Minnesota Supreme Court decided that the evidence of another person's motive to commit the crime was not relevant and therefore not admissible under state law. A decision by this court that the evidence should have been disclosed by the state before trial would be merely advisory, and have no affect on the judgment.

This Court will grant a writ of certiorari to review a state court judgment only for compelling reasons, such as where a state court has decided an important federal question in a way that conflicts with the relevant decisions of this Court. S. CT. R. 10(c). Where an asserted error consists of misapplication of a properly

stated rule of law, granting of the petition is "rare". S. CT. R. 10. In affirming the trial court in this case, the Minnesota Supreme Court properly followed established case law. The Minnesota Supreme Court's decision has not decided an important federal question in a way that conflicts with the relevant decisions of this Court.

Petitioner declares that the Minnesota Supreme Court committed a constitutional error by ruling that the disclosure requirements of *Brady v. Maryland* are inapplicable where a defendant's investigation might have produced the undisclosed evidence. Pet., P. 10, 12. This is not the holding or effect of the Minnesota Supreme Court's decision. A plain reading of the opinion shows that the Minnesota Supreme properly considered, as one of many factors bearing on the materiality of the undisclosed evidence, the actual effects the nondisclosure had on the preparation or presentation of Petitioner's case. Thus, this case really presents only fact specific issues that were adequately addressed and properly decided by the Minnesota Supreme Court. Petitioner has failed to present any compelling reasons why further review is warranted. Respondent State of Minnesota respectfully requests that the Petition be denied.

B. The decision of the Minnesota Supreme Court rests on an adequate and independent state law ground.

This Court will not issue a Writ of Certiorari to review a judgment of a state court when the decision of the state court rests on a state law ground that is independent of the federal question and adequate to support the judgment. *Coleman v. Thompson,* 501 U.S.

722, 729, 111 S.Ct. 2546, 2553-54, 115 L.Ed.2d 640 (1991).

The judgment of the Minnesota Supreme Court rests on an adequate and independent state ground, sufficient to support the judgment. Petitioner claims that the failure to disclose certain evidence to him before trial denied him a fair trial and due process of law. The Minnesota Supreme Court held that the evidence was not relevant to the issues at the trial, and was therefore not admissible. That determination was based entirely on state law.

This Court does not review state court determinations on the admissibility of evidence. *Estelle v. McGuire*, 502 U.S. 62, 68, 112 S.Ct. 475, 480, 116 L.Ed.2d 385 (1991). Since the evidence was not admissible, it was not material. Since it was not admissible—and will not be admissible even if petitioner were granted a new trial—the failure of the state to disclose the evidence before trial did not deny petitioner a fair trial.

The decision of the Minnesota Supreme Court that the Bultman evidence was inadmissible is an adequate and independent state law ground to support the judgment that the failure to disclose the evidence did not operate to deny petitioner a fair trial.

C. The Minnesota Supreme Court Applied the Correct Standard in Holding That The Suppressed Evidence Was Not Material Under **Brady v. Maryland**

Brady v. Maryland requires prosecutors to disclose certain evidence known to the prosecutor and unknown to the defense. 373 U.S. 83, 83 S. Ct. 1194, 10 L..Ed.2d 215 (1963). Evidence to be disclosed is that both favorable to the accused and "material either to guilt or punishment." *Id.* Implicit in the requirement of materiality is the concern that the suppressed evidence might have affected the outcome of the trial. *United States v. Agurs*, 427 U.S 97, 104, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976).

Favorable evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles v. Whitley*, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565, 131 L.Ed.2d 490 (1995). "A 'reasonable' probability of a different result is accordingly shown when the government's evidentiary suppression 'undermines the confidence in the outcome of the trial.'" *Id.* at 434, S.Ct. 1555 (quoting *United States v. Bagley*, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381, 87 L.Ed.2d 481 (1985)).

In determining whether a prosecutor's omission undermines the confidence in the outcome of the trial, the omission must be evaluated in the context of the entire record. *Agurs*, 427 U.S. at 112, 96 S.Ct. at 2402. This evaluation includes 1) the consideration of whether there remained no reasonable doubt of the defendant's guilt,

even had the additional evidence been admitted, and 2) any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case. *Id.* at 112-113, 96 S. Ct. at 2402, *Bagley*, 473 U.S. at 683, 105 S.Ct. at 3384.

1. The Minnesota Supreme Court Properly Considered the Bultman Evidence in Light of the Overwhelming Evidence of Petitioner's Guilt

It is the petitioner's burden to show that in light of all the evidence, including that untainted by the *Brady* violation, it is reasonably probable that a jury would have entertained a reasonable doubt regarding petitioner's guilt. *Agurs*, 427 U.S. 97 at 112-113, 96 S.Ct. at 2402. "It is simply not enough to show that the undisclosed evidence would have allowed the defense to weaken, or even destroy, the particular prosecution witnesses or items of prosecution evidence towhich the undisclosed evidence relates." *Kyles*, 514 U.S. at 461, 115 S.Ct. at 1578.

The Minnesota Supreme Court determined that given the record in this case, their confidence in Petitioner's trial was not undermined. (A-15.) The court noted that nothing in the Bultman evidence exonerated Petitioner, no Bultman facts served to impeach or contradict the testimony of three sworn witnesses, and Petitioner had not shown *any* evidence linking Bultman to charged crimes. (A-15.) The court regarded the defense's theory that Bultman killed Genelda as "mere speculation", and the evidence of his past difficulties with the Campeaus as "collateral". (A-15 to A-16.) The court was persuaded by the "substantial affirmative evidence that Bultman did not commit the charged crimes":

> Shelly, the only eyewitness to the killing, placed [Petitioner], not Bultman, at the crime scene. Similarly, Spangler identified [Petitioner], not Bultman, as the man fighting with and threatening to kill Shelly in Genelda's yard. Moreover, D.M.I. testified that [Petitioner] admitted to having committed the charged crimes. In light of the overwhelming eyewitness testimony liking [Petitioner] to the charged crimes, [Petitioner's] failure to provide any evidence liking Bultman to Genelda's house on the night of the killing is fatal to his claim.

(A-13, incorporated into *Brady* analysis by reference at A-15.)

Contrary to Petitioner's assertions, the court did not singularly rely on the fact that Petitioner had not placed Bultman at the scene of the murder, but looked at that fact in the context all of the circumstances and testimony in this case. *See* Pet., P. 8. Considering not only the undisclosed evidence on its face, but also the overwhelming evidence of Petitioner's guilt was a proper analytical framework for determining materiality. *Cf. Agurs,* 427 U.S. at 112-113, 96 S.Ct. at 2402 ("If there is no reasonable doubt about guilt whether or not the additional evidence is considered, there is no justification for a new trial.").

Petitioner, in an effort to diminish the strength of the evidence implicating him, claims an officer's observations suggested Genelda had been dead for hours, and the wounds to Genelda's body were not consistent

with that of a right-handed assailant. Pet., P. 2, 3, n. 2. To the contrary, the medical examiner specifically testified that both the detective's observations and her own were consistent with a homicide perpetrated by a right handed assailant occurring at approximately 7:30 p.m. (T. 1782, 1824-25, 1857).

Petitioner further advances a theory of inept police work evidenced by the detective's failure to include Bultman in his investigation. Pet., P. 13, n. 6. The detective personally observed stab wounds and liquid blood near Genelda's body, and found her arm moved normally, suggesting a very recent homocide. (T. 1655-60.) Shelly Campeau told police Petitioner stabbed her grandmother, and her testimony of the circumstances surrounding the murder was corroborated by the physical evidence in the home. Moments after the homicide was broadcast, police found Petitioner a few blocks from the Campeau home with blood on his hands and in his shoes. (T. 1206, 1755-56.) Donna Spangler identified him as having been the man in the Campeau yard fighting with Shelly. (T. 120, 1235-36.) The detective was wise to concentrate his investigative efforts on Petitioner.

In jail, Petitioner admitted to his cellmate, D.M.I., that he committed the crimes, and contracted to kill Shelly, the strongest witness in the case against him. Petitioner insists that D.M.I.'s testimony is not worthy of credit (Pet., P. 8, n. 4) even though the police tape recorded the contract to kill Shelly and videotaped the payoff made by Petitioner's brother. Despite Petitioner's claims of weaknesses in the state's case, the sum of the evidence overwhelmingly proved Petitioner's guilt. The Bultman evidence, having no nexus with the murder and

stabbing, did nothing to undermine confidence in the guilty verdict.

2. The Minnesota Supreme Court Properly Considered the Effect that the State's Nondisclosure Might Have Had on Petitioner's Trial Preparation and Presentation

Petitioner claims, essentially, that the Minnesota Supreme Court should not have rested any of its decision on his own pursuit of the undisclosed Bultman evidence. (Pet., P. 9-12.) This Court has held, however, that in addition to assessing the sum of the factual evidence that may have been put before a jury, a reviewing court may also, in determining materiality, conduct an assessment of the effect the omission had on the preparation or presentation of the defendant's case. *Bagley,* 473 U.S. at 683, 105 S.Ct. at 3384. The reviewing court should "assess the possibility that [an adverse] effect might have occurred in light of the *totality of the circumstances* and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response." *Id.* (emphasis supplied).

In this case, the Minnesota Supreme Court, looking at the totality of the circumstances, articulated several reasons for its conclusion that there was "no merit" to Petitioner's contention that the Bultman evidence in this case had an adverse effect on the preparation or presentation of his case. (A-16.) First, the court noted that it had always been the defense's theory that someone other than Petitioner murdered Genelda and

stabbed Shelly, and the defense was free to seek out witnesses to so testify. (A-16.)

Second, the court observed that the defense in fact knew of Bultman's relationship with the Campeaus prior to trial, having reviewed the grand jury transcripts and police reports which document that Shelly said "Bill" had been calling her grandmother's house repeatedly on the day of the murder. (A-17.) The defense chose not to investigate who "Bill" was until after the jury was seated. Although defense counsel claimed he did not have knowledge of those reports, he knew their contents and began to question Shelly about them during cross-examination at trial. (A-17.)

Third, the Minnesota Supreme Court recognized that the trial court had granted the parties a day to review the evidence, and that the defense never requested more time. (A-17.) The trial court, upon finding the Bultman evidence inadmissible, indicated a willingness to reconsider its ruling should more evidence that Bultman killed Genelda come to light. (A-17.) No such evidence was offered at trial, nor has such evidence surfaced in the nearly three years since trial, despite Petitioner's "significant but unsuccessful efforts" to find some. *See* Pet., P.14, n. 7.

Petitioner claims that "the possibility that the defense might have discovered evidence had it looked in the right places is irrelevant" to the inquiry of materiality. Pet., P. 11. In this case the nature of defense's investigation was highly relevant, because there is no real issue of what might have been discovered. Petitioner apparently had the Bultman evidence *in its entirety* at the

time of trial, since no additional evidence has been offered. Consequently, Petitioner has not suffered from the prosecution's nondisclosure. Since the reviewing court may consider detriment to the defendant's case preparation in assessing materiality, a finding of no detriment supports the conclusion that the evidence was not material.

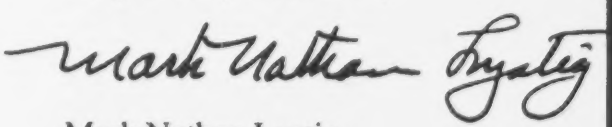
The Minnesota Supreme Court's decision does not, as Petitioner claims, "depend" on the fact that he could have found the undisclosed evidence by his own investigation. *See* Pet., P. i. Rather, the fact that he in fact *did* discover the undisclosed, irrelevant Bultman evidence, but never found more despite trial court accommodations, was but one consideration among many which led the court to its reasoned conclusion that the Bultman evidence was immaterial. Consequently, the court properly held that there was no *Brady* violation.

CONCLUSION

The Minnesota Supreme Court correctly applied the *Brady* standards set by this Court. Petitioner disagrees with the result, but does not coherently explain how the application was flawed, or that some new rule of law should be adopted. The decision of the Minnesota Supreme Court holding the evidence inadmissible on state law grounds makes any decision by this Court on disclosure requirements merely an advisory opinion. Respondent State of Minnesota respectfully requests that the Petition be denied.

Dated: August 19, 1999

Respectfully submitted,



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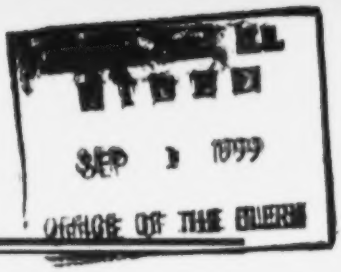

No. 99 -140

In the

Supreme Court of the United States

October Term, 1999

Edbert Neal Williams,

Petitioner,

v.

The State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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The Minnesota Supreme Court erred when it ruled that the State of Minnesota's failure to disclose favorable evidence to Petitioner was not material under *Brady v. Maryland*, 295 U.S. 78 (1963). The hidden evidence showed that another individual – Gary William Bultman – had a motive and the means to attack and kill the victims in this case. Bultman had repeatedly threatened, harassed and abused the victim over several months before the crime.

The Minnesota Supreme Court erroneously reasoned that the undisclosed Bultman evidence was not material because Petitioner might have found the evidence on his own. That holding is contrary to the Court's precedent. The purpose of the *Brady* rule is to encourage the State to disclose favorable evidence to the defense. What the defense might have found is irrelevant. Because it is plausible that timely disclosure of the evidence would have allowed Petitioner to connect Bultman to the crime, the nondisclosure was material. In addition, because Petitioner's *Brady* complaint relates to the effect the State's nondisclosure had on his investigation and case preparation – and not on the impact of the evidence he eventually located – the Minnesota Supreme Court's ruling on the admissibility of the evidence Petitioner actually found is irrelevant to the *Brady* violation. The Minnesota Supreme Court's decision should be reversed.

REASONS FOR GRANTING THE PETITION

A. The Minnesota Supreme Court's Decision Is Not Supported By An Adequate And Independent State Ground

The State of Minnesota wrongly asserts that a decision of this Court reversing the Minnesota Supreme Court's

rejection of Petitioner's claim under *Brady* will be "merely advisory." (Brief in Opposition at 12, 14.) The State argues that, because the Minnesota Supreme Court affirmed the trial court's refusal to admit the undisclosed evidence that Petitioner did locate on his own, the *Brady* violation was not material. But that analysis ignores the reason why the Minnesota Supreme Court found that the trial court did not abuse its discretion in excluding the undisclosed evidence.

The sole reason that the state court affirmed the exclusion of the evidence was Petitioner's failure to adduce evidence "linking Bultman to Genelda's house on the night of the killing." (A-13; *see* Petition for Writ of Certiorari at 7-8.) Yet, the inability of Petitioner to present such evidence is the direct result of the *Brady* violation: Had the State disclosed the Bultman evidence in a timely manner, it is highly plausible that Petitioner's counsel would have located Bultman and obtained information linking Bultman to the scene of the crime. As such, the admissibility of the evidence Petitioner actually tried to introduce is entirely distinct from, and subordinate to, the *Brady* violation at issue here. Just because the evidence Petitioner did ultimately find was immaterial does not mean that the *Brady* violation – which plausibly prevented Petitioner from getting better evidence – was also not material.

B. The State's Failure To Disclose The Bultman Evidence Was Material To The Defense's Preparation And Presentation Of The Case

In its Brief in Opposition, the State ignored the essential flaw in the Minnesota Supreme Court's opinion. The State assumed that the materiality of its failure to disclose the Bultman evidence should be analyzed by comparing the

Bultman evidence that Petitioner found on his own and the evidence presented at trial. That position renders meaningless this Court's decisions holding that when determining *Brady* materiality, a court must assess the effect that the omission had on the preparation or presentation of the defendant's case. *United States v. Bagley*, 473 U.S. 667, 682 (1985). The adverse effect of non-disclosure in this case is that Petitioner may have been able to place Bultman at the scene had the State disclosed the Bultman evidence in a timely fashion in January 1996; almost nine months before trial.

The State's only response is that Petitioner has not found any additional evidence since trial placing Bultman at the scene. Simple common sense, however, tells us that it is much more probable that evidence will be found if looked for immediately after a crime. Since the State's conduct caused the present inability to assess what may have happened had timely disclosure been made, it should bear the burden of establishing that the evidence was not material. Such a role creates the proper incentive for prosecutors to disclose evidence – the precise purpose of the *Brady* rule. *See Kyles v. Whitley*, 514 U.S. 419, 439-40 (1995).

The State does not directly address Petitioner's central argument that the Minnesota Supreme Court's rule, that *Brady* materiality turns on the possibility that a defendant may have found the evidence himself, is contrary to this Court's precedent. Instead, the State simply recites the evidence against Petitioner. Again, the State misses the point. Had the Bultman evidence been disclosed, it is plausible that the evidence at trial could have changed and the outcome of the trial been different.

First, while Shelly Campeau identified Petitioner as the killer, she also had an interest in protecting her current boyfriend – Bultman – with whom she talked several times on

the day of the murder. (Tr. 1372-73.) Donna Spangler's testimony that she saw Bultman and Shelly Campeau struggling outside the house is consistent both with the State's theory (that Petitioner attacked Shelly and killed Genelda Campeau) and the defense theory (that Genelda was dead when Petitioner arrived and that Shelly was trying to keep Petitioner on the scene to frame him). Indeed, Spangler's story changed in the course of the investigation. In some versions, Shelly is attempting to escape from Petitioner. In others, Petitioner is the one trying to elude Shelly. (Tr. 1125, 1130-31, 1516-17.)

Additionally, the State misstates the record when it claims that the police tape of discussions between Petitioner and a jailhouse informant records a contract to kill Shelly Campeau. It does not. In any event, even if the informant testified truthfully, Petitioner's purported discussions with him are consistent with both the State and the defense theories: Petitioner's fear arose from being accused; not because he was guilty. Finally, the State's discussion of certain investigation details paints a misleading picture. Although there was evidence that the killing occurred about 7:30 p.m. and that the wounds might be consistent with a right handed assailant (evidence pointing to Petitioner's guilt), other evidence puts the time of Genelda Campeau's death significantly earlier (before Petitioner arrived at the house) and suggests that the killer was left-handed. (Tr. 1186, 1162, 1856.)

The fundamental point is that substantial evidence supported Petitioner's claim that someone else killed Genelda and that Petitioner arrived after the murder occurred. Of course, Bultman fits the bill as the actual killer. It is plausible, then, that timely disclosure of the Bultman evidence would have allowed the defense to connect Bultman more directly to

the crime. As such, the State's complete failure to disclose the Bultman evidence was material under *Brady*. The fact that Petitioner may have discovered the Bultman evidence on his own is simply beside the point.